

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier refused to compensate the members of Extra Gang #6020 for per diem, mileage expense and travel time incurred as a consequence of the Carrier's improper change of the gang's headquarters from Bradley, Arkansas to Benton, Louisiana, beginning January 29, 1985 (System File MW-85-34-CB/53-836).

(2) The claimants shall be compensated for per diem, mileage expenses and travel time incurred by them as a consequence of the violation described in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

By letter dated March 22, 1985, the Organization filed Claim alleging Carrier's circumvention of the Agreement. The Organization argued that Carrier had headquartered Gang #6020 which had by Agreement in the past received per diem rights due to assigned mobile headquarters. By headquartering the gang the employees were denied lodging, meal and travel rights.

The locus of the present dispute was not in the initial headquartering of Extra Gang #6020, but in the subsequent change of headquarters. There is no dispute in the record that this was an Extra Gang established on October 15, 1984, at Bradley, Arkansas. It is also not disputed that on January 14, 1985, the employees of Extra Gang #6020 were informed that their headquarters would be changed on January 29, 1985, to Benton, Louisiana. The Carrier argues it complied with the Agreement in its actions. The Organization charges the Carrier with a violation.

The Board has reviewed the Organization's on-property argument and evidence. De novo materials presented here for the first time before this Board by both sides are excluded from consideration. The threshold issue is whether the Carrier has violated Article 16, Section 12 of the Agreement. A careful reading of the probative evidence presented by the Organization does not support its argument.

In its ex parte Submission the Organization argues that as Arbitration Award No. 298 was incorporated "word for word" into the Agreement, the interpretations are likewise applicable. This argument was not raised on the property, nor was the Award submitted to support such an assertion. The Organization similarly contends on the property that "...there have been many interpretations of Section V of the Award of Arbitration Board No. 298 stating that a headquartered gang cannot be moved until the expiration of one year from date of assignment." None of the interpretations to the Award was discussed or made a part of the on-property attempt to resolve this dispute. The negotiated Agreement clearly states:

"In full disposition of Section V of the Award of Arbitration Board No. 298, it is agreed that:

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SECTION II.

* * * * *

A. The Carrier shall designate a headquarters point for each regular position and each regular assigned relief position. For employees, other than those serving in regular positions or in regular assigned relief positions, the carrier shall designate a headquarters point for each employee. No designated headquarters point may be changed more frequently than once each 60 days and only after at least 15 days' written notice to the employee affected. (emphasis added)

This Board may only interpret the Agreement language, which it finds clear and unambiguous in the case at bar. The Carrier followed the Agreement when it gave a fifteen (15) days' notice and changed the headquarters point of the Extra Gang after sixty (60) days. Since the time limits are clearly a part of this Agreement, we have no right to alter them by interpretation no matter how unreasonable they may be in practice to either party. Finding no violation of the Agreement as written, the Board denies the Claim.

A W A R D


Claim denied.

Form 1
Page 3

Award No. 27775
Docket No. MW-27111
89-3-86-3-289

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.